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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BINICIO MORALES, SALVADOR SANCHEZ
and FABIAN DE JESUS, *individually and on behalf*
of all others similarly situated,

Plaintiff,

-against-

AHDS BAGEL, LLC, 1101 BAGEL CORP. (d/b/a
PICK A BAGEL), ARIEY NUSSBAUM, HAIM
WYSOKI AND DOV MOSHE,,

Defendants.

Case No. 20 Civ. 05230 (VEC)

ANSWER – COLLECTIVE
ACTION UNDER 29 U.S.C. § 216(b)

Defendants AHDS Bagel, LLC, 1101 Bagel Corp (d/b/a Pick a Bagel), Ariei Nussbaum,
Haim Wysoki and Dov Moshe (the “**Defendants**”) respectfully answer the Complaint – Collective
Action under 29 U.S.C § 216(b) (the “**Complaint**”) as follows:

NATURE OF THE ACTION

1. Defendants deny the allegations set forth in Paragraph 1 of the Complaint.
2. Defendants deny the allegations set forth in Paragraph 2 of the Complaint.
3. Defendants deny the allegations set forth in Paragraph 3 of the Complaint.
4. Defendants deny the allegations set forth in Paragraph 4 of the Complaint.
5. Defendants deny the allegations set forth in Paragraph 5 of the Complaint.
6. Defendants deny the allegations set forth in Paragraph 6 of the Complaint.
7. Defendants deny the allegations set forth in Paragraph 7 of the Complaint.
8. Defendants deny the allegations set forth in Paragraph 8 of the Complaint.

9. Defendants deny the allegations set forth in Paragraph 9 of the Complaint.
10. Defendants deny the allegations set forth in Paragraph 10 of the Complaint.
11. Defendants deny the allegations set forth in Paragraph 11 of the Complaint.
12. Defendants deny the allegations set forth in Paragraph 12 of the Complaint.
13. Defendants deny the allegations set forth in Paragraph 13 of the Complaint.
14. Defendants deny the allegations set forth in Paragraph 14 of the Complaint.
15. Defendants deny the allegations set forth in Paragraph 15 of the Complaint.

JURISDICTION AND VENUE

16. Defendants deny the allegations set forth in Paragraph 16 of the Complaint.
17. Defendants deny the allegations set forth in Paragraph 17 of the Complaint.

THE PARTIES

Plaintiffs

18. Defendants deny the allegations set forth in Paragraph 18 of the Complaint.
19. Defendants deny the allegations set forth in Paragraph 19 of the Complaint.
20. Defendants deny the allegations set forth in Paragraph 20 of the Complaint.
21. Defendants deny the allegations set forth in Paragraph 21 of the Complaint.
22. Defendants deny the allegations set forth in Paragraph 22 of the Complaint.
23. Defendants deny the allegations set forth in Paragraph 23 of the Complaint.

Defendants

24. Defendants deny the allegations set forth in Paragraph 24 of the Complaint.
25. Defendants deny the allegations set forth in Paragraph 25 of the Complaint.
26. Defendants deny the allegations set forth in Paragraph 26 of the Complaint.
27. Defendants deny the allegations set forth in Paragraph 27 of the Complaint.

28. Defendants deny the allegations set forth in Paragraph 28 of the Complaint.

29. Defendants deny the allegations set forth in Paragraph 29 of the Complaint.

FACTUAL ALLEGATIONS

Defendants Constitute Joint Employers

30. Defendants deny the allegations set forth in Paragraph 30 of the Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of the Complaint.

32. Defendants deny the allegations set forth in Paragraph 32 of the Complaint.

33. Defendants deny the allegations set forth in Paragraph 33 of the Complaint.

34. Defendants deny the allegations set forth in Paragraph 34 of the Complaint.

35. Defendants deny the allegations set forth in Paragraph 35 of the Complaint.

36. Defendants deny the allegations set forth in Paragraphs 36a.-h. of the Complaint.

37. Defendants deny the allegations set forth in Paragraph 37 of the Complaint.

38. Defendants deny the allegations set forth in Paragraph 38 of the Complaint.

39. Defendants deny the allegations set forth in Paragraph 39 of the Complaint.

Individual Plaintiffs

40. Defendants deny the allegations set forth in Paragraph 40 of the Complaint.

41. Defendants deny the allegations set forth in Paragraph 41 of the Complaint.

Plaintiff Binicio Morales

42. Defendants deny the allegations set forth in Paragraph 42 of the Complaint.

43. Defendants deny the allegations set forth in Paragraph 43 of the Complaint.

44. Defendants deny the allegations set forth in Paragraph 44 of the Complaint.

45. Defendants deny the allegations set forth in Paragraph 45 of the Complaint.

46. Defendants deny the allegations set forth in Paragraph 46 of the Complaint.

47. Defendants deny the allegations set forth in Paragraph 47 of the Complaint.
48. Defendants deny the allegations set forth in Paragraph 48 of the Complaint.
49. Defendants deny the allegations set forth in Paragraph 49 of the Complaint.
50. Defendants deny the allegations set forth in Paragraph 50 of the Complaint.
51. Defendants deny the allegations set forth in Paragraph 51 of the Complaint.
52. Defendants deny the allegations set forth in Paragraph 52 of the Complaint.
53. Defendants deny the allegations set forth in Paragraph 53 of the Complaint.
54. Defendants deny the allegations set forth in Paragraph 54 of the Complaint.
55. Defendants deny the allegations set forth in Paragraph 55 of the Complaint.
56. Defendants deny the allegations set forth in Paragraph 56 of the Complaint.
57. Defendants deny the allegations set forth in Paragraph 57 of the Complaint.
58. Defendants deny the allegations set forth in Paragraph 58 of the Complaint.
59. Defendants deny the allegations set forth in Paragraph 59 of the Complaint.
60. Defendants deny the allegations set forth in Paragraph 60 of the Complaint.
61. Defendants deny the allegations set forth in Paragraph 61 of the Complaint.
62. Defendants deny the allegations set forth in Paragraph 62 of the Complaint.
63. Defendants deny the allegations set forth in Paragraph 63 of the Complaint.
64. Defendants deny the allegations set forth in Paragraph 64 of the Complaint.
65. Defendants deny the allegations set forth in Paragraph 65 of the Complaint.
66. Defendants deny the allegations set forth in Paragraph 66 of the Complaint.

Plaintiff Salvador Sanchez

67. Defendants deny the allegations set forth in Paragraph 67 of the Complaint.
68. Defendants deny the allegations set forth in Paragraph 68 of the Complaint.

69. Defendants deny the allegations set forth in Paragraph 69 of the Complaint.
70. Defendants deny the allegations set forth in Paragraph 70 of the Complaint.
71. Defendants deny the allegations set forth in Paragraph 71 of the Complaint.
72. Defendants deny the allegations set forth in Paragraph 72 of the Complaint.
73. Defendants deny the allegations set forth in Paragraph 73 of the Complaint.
74. Defendants deny the allegations set forth in Paragraph 74 of the Complaint.
75. Defendants deny the allegations set forth in Paragraph 75 of the Complaint.
76. Defendants deny the allegations set forth in Paragraph 76 of the Complaint.
77. Defendants deny the allegations set forth in Paragraph 77 of the Complaint.
78. Defendants deny the allegations set forth in Paragraph 78 of the Complaint.
79. Defendants deny the allegations set forth in Paragraph 79 of the Complaint.
80. Defendants deny the allegations set forth in Paragraph 80 of the Complaint.
81. Defendants deny the allegations set forth in Paragraph 81 of the Complaint.
82. Defendants deny the allegations set forth in Paragraph 82 of the Complaint.
83. Defendants deny the allegations set forth in Paragraph 83 of the Complaint.
84. Defendants deny the allegations set forth in Paragraph 84 of the Complaint.
85. Defendants deny the allegations set forth in Paragraph 85 of the Complaint.
86. Defendants deny the allegations set forth in Paragraph 86 of the Complaint.
87. Defendants deny the allegations set forth in Paragraph 87 of the Complaint.
88. Defendants deny the allegations set forth in Paragraph 88 of the Complaint.
89. Defendants deny the allegations set forth in Paragraph 89 of the Complaint.
90. Defendants deny the allegations set forth in Paragraph 91 of the Complaint.

Plaintiff Fabian De Jesus

91. Defendants deny the allegations set forth in Paragraph 91 of the Complaint.
92. Defendants deny the allegations set forth in Paragraph 92 of the Complaint.
93. Defendants deny the allegations set forth in Paragraph 93 of the Complaint.
94. Defendants deny the allegations set forth in Paragraph 94 of the Complaint.
95. Defendants deny the allegations set forth in Paragraph 95 of the Complaint.
96. Defendants deny the allegations set forth in Paragraph 96 of the Complaint.
97. Defendants deny the allegations set forth in Paragraph 97 of the Complaint.
98. Defendants deny the allegations set forth in Paragraph 98 of the Complaint.
99. Defendants deny the allegations set forth in Paragraph 99 of the Complaint.
100. Defendants deny the allegations set forth in Paragraph 100 of the Complaint.
101. Defendants deny the allegations set forth in Paragraph 101 of the Complaint.
102. Defendants deny the allegations set forth in Paragraph 102 of the Complaint.
103. Defendants deny the allegations set forth in Paragraph 103 of the Complaint.
104. Defendants deny the allegations set forth in Paragraph 104 of the Complaint.
105. Defendants deny the allegations set forth in Paragraph 105 of the Complaint.
106. Defendants deny the allegations set forth in Paragraph 106 of the Complaint.
107. Defendants deny the allegations set forth in Paragraph 107 of the Complaint.
108. Defendants deny the allegations set forth in Paragraph 108 of the Complaint.
109. Defendants deny the allegations set forth in Paragraph 109 of the Complaint.
110. Defendants deny the allegations set forth in Paragraph 110 of the Complaint.

Defendants' General Employment Practices

111. Defendants deny the allegations set forth in Paragraph 111 of the Complaint.

112. Defendants deny the allegations set forth in Paragraph 112 of the Complaint.
113. Defendants deny the allegations set forth in Paragraph 113 of the Complaint.
114. Defendants deny the allegations set forth in Paragraph 114 of the Complaint.
115. Defendants deny the allegations set forth in Paragraph 115 of the Complaint.
116. Defendants deny the allegations set forth in Paragraph 116 of the Complaint.
117. Defendants deny the allegations set forth in Paragraph 117 of the Complaint.
118. Defendants deny the allegations set forth in Paragraph 118 of the Complaint.
119. Defendants deny the allegations set forth in Paragraph 119 of the Complaint.
120. Defendants deny the allegations set forth in Paragraph 120 of the Complaint.
121. Defendants deny the allegations set forth in Paragraph 121 of the Complaint.
122. Defendants deny the allegations set forth in Paragraph 122 of the Complaint.
123. Defendants deny the allegations set forth in Paragraph 123 of the Complaint.
124. Defendants deny the allegations set forth in Paragraph 124 of the Complaint.
125. Defendants deny the allegations set forth in Paragraph 125 of the Complaint.
126. Defendants deny the allegations set forth in Paragraph 126 of the Complaint.
127. Defendants deny the allegations set forth in Paragraph 127 of the Complaint.
128. Defendants deny the allegations set forth in Paragraph 128 of the Complaint.
129. Defendants deny the allegations set forth in Paragraph 129 of the Complaint.
130. Defendants deny the allegations set forth in Paragraph 130 of the Complaint.
131. Defendants deny the allegations set forth in Paragraph 131 of the Complaint.
132. Defendants deny the allegations set forth in Paragraph 132 of the Complaint.
133. Defendants deny the allegations set forth in Paragraph 133 of the Complaint.
134. Defendants deny the allegations set forth in Paragraph 134 of the Complaint.

FLSA COLLECTIVE ACTION CLAIMS

135. Defendants deny the allegations set forth in Paragraph 135 of the Complaint.

136. Defendants deny the allegations set forth in Paragraph 136 of the Complaint.

137. Defendants deny the allegations set forth in Paragraph 137 of the Complaint.

138. Defendants deny the allegations set forth in Paragraph 138 of the Complaint.

FIRST CAUSE OF ACTION

Violation of the Minimum Wage Provisions of the FLSA

139. Defendant repeats and reiterates each and every response in Paragraphs 1-138 as though more fully set forth at length herein.

140. Defendants deny the allegations set forth in Paragraph 140 of the Complaint.

141. Defendants deny the allegations set forth in Paragraph 141 of the Complaint.

142. Defendants deny the allegations set forth in Paragraph 142 of the Complaint.

143. Defendants deny the allegations set forth in Paragraph 143 of the Complaint.

144. Defendants deny the allegations set forth in Paragraph 144 of the Complaint.

145. Defendants deny the allegations set forth in Paragraph 145 of the Complaint.

SECOND CAUSE OF ACTION

Violation of the Overtime Provisions of the FLSA

146. Defendant repeats and reiterates each and every response in Paragraphs 1-138 as though more fully set forth at length herein.

147. Defendants deny the allegations set forth in Paragraph 147 of the Complaint.

148. Defendants deny the allegations set forth in Paragraph 148 of the Complaint.

149. Defendants deny the allegations set forth in Paragraph 149 of the Complaint.

THIRD CAUSE OF ACTION
Violation of the New York Minimum Wage Act

150. Defendant repeats and reiterates each and every response in Paragraphs 1-138 as though more fully set forth at length herein.

151. Defendants deny the allegations set forth in Paragraph 151 of the Complaint.

152. Defendants deny the allegations set forth in Paragraph 152 of the Complaint.

153. Defendants deny the allegations set forth in Paragraph 153 of the Complaint.

154. Defendants deny the allegations set forth in Paragraph 154 of the Complaint.

FOURTH CAUSE OF ACTION
Violation of the Overtime Provisions of the New York State Labor Law

155. Defendant repeats and reiterates each and every response in Paragraphs 1-138 as though more fully set forth at length herein.

156. Defendants deny the allegations set forth in Paragraph 156 of the Complaint.

157. Defendants deny the allegations set forth in Paragraph 157 of the Complaint.

158. Defendants deny the allegations set forth in Paragraph 158 of the Complaint.

FIFTH CAUSE OF ACTION
Violation of the Spread of Hours Wage Order of the New York Commissioner of Labor

159. Defendant repeats and reiterates each and every response in Paragraphs 1-138 as though more fully set forth at length herein.

160. Defendants deny the allegations set forth in Paragraph 160 of the Complaint.

161. Defendants deny the allegations set forth in Paragraph 161 of the Complaint.

162. Defendants deny the allegations set forth in Paragraph 162 of the Complaint.

SIXTH CAUSE OF ACTION

Violation of the Notice and Recordkeeping Requirements of the New York Labor Law

163. Defendant repeats and reiterates each and every response in Paragraphs 1-138 as though more fully set forth at length herein.

164. Defendants deny the allegations set forth in Paragraph 164 of the Complaint.

165. Defendants deny the allegations set forth in Paragraph 165 of the Complaint.

SEVENTH CAUSE OF ACTION

Violation of the Wage Statement Provisions of the New York Labor Law

166. Defendant repeats and reiterates each and every response in Paragraphs 1-138 as though more fully set forth at length herein.

167. Defendants deny the allegations set forth in Paragraph 167 of the Complaint.

168. Defendants deny the allegations set forth in Paragraph 168 of the Complaint.

EIGHTH CAUSE OF ACTION

Recovery of Equipment Costs

169. Defendant repeats and reiterates each and every response in Paragraphs 1-138 as though more fully set forth at length herein.

170. Defendants deny the allegations set forth in Paragraph 170 of the Complaint.

171. Defendants deny the allegations set forth in Paragraph 171 of the Complaint.

NINTH CAUSE OF ACTION

Unlawful Deductions from Wages in Violation of the New York Labor Law

172. Defendant repeats and reiterates each and every response in Paragraphs 1-138 as though more fully set forth at length herein.

173. Defendants deny the allegations set forth in Paragraph 173 of the Complaint.

174. Defendants deny the allegations set forth in Paragraph 174 of the Complaint.

175. Defendants deny the allegations set forth in Paragraph 175 of the Complaint.

176. Defendants deny the allegations set forth in Paragraph 176 of the Complaint.

177. Defendants deny the allegations set forth in Paragraph 177 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The Complaint fails to state a claim, in whole or in part, upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiffs' claims and the claims of the putative collective action members are barred in whole or in part because, at all times relevant hereto, Defendants have acted in good faith and have not violated any rights that may be secured to Plaintiffs or the putative collective action members under any federal, state, or local laws, rules, regulations or guidelines.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs have failed to give the required notice to Defendants pursuant to the New York Business Corporation Law and Limited Liability Law to see personal liability against the individual defendants as shareholders.

FOURTH AFFIRMATIVE DEFENSE

4. The Complaint and each and every putative cause of action of alleged there may be barred by the doctrine of "unclean hands."

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiffs' claims and those of the putative collective action members they purport to represent are barred in whole or in part by the doctrines of waiver, estoppel, laches, res judicata or ratification.

SIXTH AFFIRMATIVE DEFENSE

6. Defendants presently have insufficient knowledge or information upon which to form a belief as to whether they have or may have additional, yet unstated defenses. Defendants reserve the right to assert additional defenses in the event their investigation or discovery indicates that additional defenses are appropriate.

WHEREFORE, Defendants pray for judgment against Plaintiffs as follows:

1. Dismissing the Complaint;
2. For attorneys' fees and costs of suit incurred herein; and
3. For such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 22 , 2020

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